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State v. Bristlin Appellant's Brief Dckt. 45076

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	NO. 45076 & NO. 45077
)	
Plaintiff-Respondent,)	KOOTENAI COUNTY
)	NO. CR 2016-14491 &
v.)	NO. CR 2016-21949
)	
MICHAEL THOMAS BRISTLIN,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael Thomas Bristlin pled guilty to two counts of lewd conduct with a child under the age of sixteen, one in each of two separate cases. In each case, the district court imposed a concurrent, unified sentence of fifteen years, with three years fixed, and declined to follow the presentence investigator’s recommendation for retained jurisdiction. In this consolidated appeal, Mr. Bristlin challenges his sentences, asserting that the district court’s refusal to retain jurisdiction was unreasonable under the circumstances of his case, representing an abuse of discretion.

Statement of the Facts and Course of Proceedings

In July of 2016, A.B.'s father told police about a suspected dating relationship between his fourteen-year-old daughter, A.B., and Mr. Bristlin, who was twenty-one. (R., p.142.) Both A.B. and Mr. Bristlin admitted having sex. (R., p.142.) The State charged Mr. Bristlin with lewd conduct with a minor child under the age of sixteen, and rape. (R., p.147.) (CR-16-14491; Appeal No. 45076.) Later, K.S., also a fourteen-year-old, told police she'd had sex with Mr. Bristlin after meeting him on facebook. (R., p.212.) Based on this report, the State filed a second complaint, and later an information, charging Mr. Bristlin with another count of lewd conduct with a minor. (R., pp.204, 231.) (CR-2016-21949; Appeal No. 45077.)

At the time of these encounters Mr. Bristlin was on felony probation in an earlier case, having received a withheld judgment for possession of methamphetamine. (PSI, p.6.) Mr. Bristlin had been in treatment, but relapsed. (PSI, p.75.)

Pursuant to an agreement with the State that resolved both cases, Mr. Bristlin pled guilty to the lewd conduct count in each case, and the rape allegation was dismissed. (R., pp.166-168; PSI, pp.2, 58; Tr., p.7. L.20 - p.8, L.12.)

The presentence investigation report ("PSI") writer recommended retained jurisdiction and a rider, "based on his level of assessed risk, and other protective factors." (PSI, p.71.) At sentencing, the State recommended concurrent twenty-five year sentences, with five years fixed, for each count, and opposed the PSI's recommendation for retained jurisdiction. (Tr., p.16, Ls.10-12; p.20, Ls.20-23.) Mr. Bristlin asked the court to retain jurisdiction, and that the fixed portion of his sentences be no more than three years each, and concurrent. (Tr., p.23, Ls.10-15.) Mr. Bristlin personally apologized to the court and to the others involved, and expressed his desire to make the changes he needs to make. (Tr., p.23, L.19 – p.24, L.1.)

The district court imposed a unified sentence of fifteen years, with three years fixed, but did not retain jurisdiction.¹ (Tr., p.26, Ls.9-22; R., pp.176, 236.) Mr. Bristlin timely appealed both judgments (R., pp.152, 242), and this Court consolidated the appeals (R., p.190).

ISSUE

Did the district court abuse its sentencing discretion by declining to retain jurisdiction this case?

ARGUMENT

The District Court Abused Sentencing Discretion By Refusing To Retain Jurisdiction Because It Lacked Sufficient Information To Determine Whether Probation Would Be Appropriate

A. Introduction

Mr. Bristlin asserts that the district court's refusal to retain jurisdiction was unreasonable under the circumstances, representing an abuse of discretion, because the court lacked sufficient information to determine whether probation was appropriate in this case.

B. Standard of Review

The Court reviews the district court's sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence,

¹ Mr. Bristlin filed timely Rule 35 motions in both cases (R., pp.191, 254), but the district court has not yet ruled on these motions.

rehabilitation, or retribution.” *State v. Miller*, 151 Idaho 828, 834 (Ct. App. 2011). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard for the nature of the offense, the character of the offender and the protection of the public interest.’” *State v. Williams*, 151 Idaho 828, 834 (2011) (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

In addition to imposing a sentence directly, the district court has the discretion to retain jurisdiction. *See* I.C. § 19–2601(4). The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 687 P.2d 583 (Ct.App.1984); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct.App.1982). The sentencing court's refusal to retain jurisdiction is not an abuse of discretion if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005).

C. The District Court Abused Its Discretion When It Refused To Retain Jurisdiction Because It Lacked Sufficient Information To Determine Whether Probation Would Be Appropriate In This Case

The district court lacked sufficient information regarding Mr. Bristlin's rehabilitative potential to determine that probation would be inappropriate in his cases. The IDOC's presentence investigator recommended retained jurisdiction for Mr. Bristlin, “based on his level of assessed risk, and other protective factors.” (PSI, p.71.) The PSI writer concluded Mr. Bristlin would benefit from the rehabilitative programs and pro-social activities available in the rider program, and that these programs could help provide him the skills he needs to live a crime-free life. (PSI, p.70.) The investigator made her recommendation after reviewing

Mr. Bristlin's records, including the GAIN-I CORE assessment, and after interviewing Mr. Bristlin at length about the offenses. (PSI, pp.1-72.) While not binding on the sentencing court, the PSI writer's insight and recommendation present a reasonable option for Mr. Bristlin in these cases, particularly given Mr. Bristlin's age – twenty-two at the time of sentencing – and the fact he had never before had the benefit of an IDOC rider program. (Tr., p.21, Ls.4-5.)

Moreover, according to the PSI report, a majority of Idaho offenders with a similar age, criminal history, LSI-R, and offense of conviction, received a sentence of retained jurisdiction. (PSI, p.85.)

Mr. Bristlin's drug addiction and his strong potential for overcoming that addiction given his youth and strong family support, are mitigating factors that bode well for a successful probation. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). Mr. Bristlin began using methamphetamine when he was nineteen, and had been using it intravenously, once or twice a day, until he was arrested in February of 2016; (PSI, pp.67, 75.) He had completed treatment and been clean for four months when he relapsed, using meth, alcohol, and LSD. (PSI, p.75.) Prior to his drug use, Mr. Bristlin had no significant criminal history. (PSI, p.61.) Mr. Bristlin's instant offenses, which reflect exceedingly poor judgment, correlate in time with his recent relapse, and may well be causally-related. (PSI, p.75.)

Mr. Bristlin's strong support from family and his friends would also serve him well on probation. *See State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991). Mr. Bristlin has been a good and reliable brother, son, grandson and cousin. (PSI, pp.89-97.) In return, he has earned the dedication of family members, notwithstanding these offenses, who have vowed to help him with his recovery and with the changes that Mr. Bristlin is committed to make. (PSI, pp.89-97.)

Finally, Mr. Bristlin's remorse and responsibility for his actions serve as mitigation and are indications of a successful probation. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). In his presentence interview, Mr. Bristlin acknowledged his mistakes and apologized for the pain his actions have caused others, and he asked for forgiveness. (PSI, p.61.) At sentencing, he personally apologized to the court and extended that apology to everyone; he took responsibility for his actions, recognizing that he needs to change. (Tr., p.23, Ls.19-23.)

These facts warranted an extended period of time for Mr. Bristlin to demonstrate, and for the district court to evaluate, Mr. Bristlin's rehabilitation potential. In light of these facts, the district court's refusal to retain jurisdiction represents an abuse of discretion.

CONCLUSION

Mr. Bristlin respectfully requests that this Court remand his case to the district court with instructions to retain jurisdiction.

DATED this 30th day of October, 2017.

/s/
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, as indicated below:

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Delivered via e-mail

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/s/
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